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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,423	09/27/2001	Klaus-Peter Jonderko	206033US0	8759
22850	7590	02/25/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SERGENT, RABON A	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/963,423

Applicant(s)

JONDERKO ET AL. 

Examiner

Rabon Sergeant

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

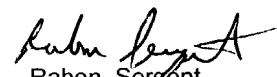
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 2-11,13-21,25,27 and 28.Claim(s) withdrawn from consideration: 22-24.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Rabon Sergeant
Primary Examiner
Art Unit: 1711

Continuation of 3. : The 35 U.S.C. 112, second paragraph rejection of claims 2-11, 13-21, and 27, set forth within paragraph 2 of the final Office action.

Continuation of 5. : The 35 U.S.C. 112, first paragraph rejection and the prior art rejections have been maintained for the reasons set forth within the final Office action. Furthermore, applicants' argument concerning the respective particle sizes of Reiff et al. and the instant invention is not well taken. Applicants have argued that the instant claims recite a minimum of 1 micrometer; however, this statement is incorrect; in fact, the claims recite a minimum of about 1 micrometer and the position is taken that "about 1 micrometer" encompasses particle sizes below 1 micrometer. Additionally, the particle sizes of Reiff et al. are not confined to 50 to 500 millimicrons. Firstly, it is noted that Reiff et al. ('482) recite a range endpoint of 800 millimicrons (see column 10, line 51); this endpoint, in and of itself, is considered to be encompassed by applicants' claims. Secondly, the references do not require that the particles fall within the recited ranges; rather, the particle diameter is defined as the diameter at which 50% of the particles are above and 50% of the particles are below. In view of this definition, the position is taken that it is reasonable to conclude that approximately 50% of the particles have a particle size that meets the claimed range.


RABON SERGENT
PRIMARY EXAMINER